

# In the Supreme Court of the State of Alaska

**Paul T. Dunham,**

Appellant,

v.

**Kiana A. Johnson,**

Appellee.

Supreme Court No. S-17979

## Order

Date of Order: **5/3/2021**

Trial Court Case No. **3AN-19-09860CI**

Before: Bolger, Chief Justice, Winfree, Maassen, Carney, and Borghesan, Justices.

On consideration of the Appellant's motion to extend time to file transcripts filed 4/15/2021, the Appellee's opposition filed on 4/22/2021, and the reply accepted on 4/28/2021,

**IT IS ORDERED:** The motion is **GRANTED**. Transcripts are due from the Appellant's transcriber on or before **5/19/2021**. Failure to file transcripts by this date may result in this appeal being dismissed.

**IT IS FURTHER ORDERED:** Appellant's counsel shall file an affidavit showing cause why counsel should not be sanctioned for the lengthy delay in procuring transcripts and failure to comply with the appellate rules.

Appeals from child custody orders are expedited under Alaska Appellate Rule 218,<sup>1</sup> requiring that transcripts be filed within 30 days of the appeal.<sup>2</sup> A motion to extend the time to file transcripts is governed by Appellate Rule 503. Rule 503 requires a party seeking an extension of time to file a descriptive motion supported by an affidavit

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<sup>1</sup> Alaska R. App. P. 218(a)(1) (stating rule applies to child custody orders).

<sup>2</sup> Alaska R. App. P. 218(e).

attesting to the basis for the request.<sup>3</sup>

In this matter the Clerk's Office issued an opening notice stating that completed transcripts were due February 16. Dunham filed an unopposed motion for a 30-day extension of time to file the transcripts, stating that more time was needed because "pertinent portions of the trial must be identified for transcription" in order to avoid the cost of transcribing the entire five-day trial. Notably, the appellate rules require an appellant to designate portions of the electronic record for transcription when the notice of appeal is filed.<sup>4</sup> Other than stating that counsel was "heavily engaged in back-to-back trials" and had a "full caseload," the motion did not explain why counsel, who appeared to have handled the case before the trial court, required so much additional time to identify the relevant portions of the trial for transcription. Nor was the motion supported by an affidavit, as required by Rule 503(b). Yet the motion was not opposed, and it was granted by the clerk.

On March 18 Dunham filed another motion for a 30-day extension to file the transcripts. This motion also failed to comply with Rule 503(b). The one-paragraph motion contained no explanation about why an additional extension was necessary and was not supported by an affidavit. This motion too was unopposed. It was granted by an individual justice, who noted that no further extensions of time would be granted absent extraordinary circumstances.<sup>5</sup> A new deadline was set for April 19.

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<sup>3</sup> Alaska R. App. P. 503(b)(1)-(5).

<sup>4</sup> Alaska R. App. P. 204(b)(6); Alaska R. App. P. 210(b)(1).

<sup>5</sup> *Cf.* Alaska R. App. P. 503.5(c)(1)-(2) (providing, with respect to filing briefs in expedited appeals, that initial extension motion may be granted upon showing of due diligence and that further extensions may be granted upon showing of

On April 9 Dunham filed his third motion for a 30-day extension to file the completed transcripts. This motion was accompanied by an affidavit asserting “extraordinary circumstances” necessitating a further extension. The affidavit stated that Dunham’s counsel had attempted to have the transcripts prepared by a company called Anchorage Transcription, Inc.; that this company was not actually a local transcriber (as its name would suggest) and was not sufficiently familiar with Alaska court rules; that a second, actually local company had been retained for the transcription job; and that the company would need more time in light of the extensive electronic record to be transcribed.

Johnson opposed the motion, challenging the implicit suggestion that the transcription company was to blame for the delay. The opposition was supported by a letter from an attorney for Anchorage Transcription, Inc. and an affidavit from the company’s owner confirming and “clarifying” the representations made in the letter. In particular, the letter represented that Dunham’s law firm had not reached out to the first transcription company until March 19 and had not attempted to retain the transcription company until April 7 — only 12 days before the deadline for filing the transcripts.

Dunham moved for leave to file a reply, which was granted. The reply focuses on Anchorage Transcription’s asserted misrepresentation of whether it is a local outfit. The reply does not address the assertion that Dunham’s counsel never took the steps necessary to retain Anchorage Transcription until April 7. The reply does assert that Appellant “has committed to pay \$9,900” to Pacific Rim Reporting for the transcripts in this matter, but these last assertions are not supported by an affidavit.

The court is troubled by the possibility that Appellant’s counsel has not

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“extraordinary and compelling circumstances” supported by detailed affidavit).

diligently attempted to procure the transcripts in this expedited child custody case. The best interests of children require that disputes over custody be resolved as quickly as reasonably possible. The appellate rules require counsel to decide which portions of the electronic record to transcribe *before* the appeal is filed, and transcripts must be filed 30 days after that. Doing so may not always be possible, especially in cases with extremely lengthy trials. But it is hard to discern a justifiable reason for the months-long delay in this case, which involved only a five-day trial. Counsel offered little in the way of explanation for the initial delays, and its assertions were not supported by affidavits as required by the appellate rules. Appellant's third extension requested was supported by an affidavit, but its implicit suggestion that the first transcriber is largely to blame for the last round of delay is called into doubt by the assertions in Appellee's opposition, which Appellant did not substantially rebut in reply. Finally, the new factual assertions in Appellant's reply were not supported by an affidavit.

This court favors resolution of cases on the merits, especially in matters as important as child custody. And it does not appear that the delay in procuring transcripts or failure to follow the appellate rules is attributable in any way to Appellant himself. Therefore, dismissal for want of prosecution would be an improper sanction, and we grant the requested extension so that the transcripts may be filed and the case heard on its merits. However, we hereby order Appellant's counsel to show cause why she should not be sanctioned for the delays in procuring transcripts in this expedited case and failure to abide by the court rules concerning motions and supporting affidavits.<sup>6</sup> In particular, counsel shall describe:

- The work that was done, by whom and when, to identify the relevant portions of

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<sup>6</sup> See Alaska R. App. P. 510(c).


the record to transcribe;

- The date and nature of all communications between counsel's firm and Anchorage Transcription, Inc. (without disclosing any privileged communications);
- If and when counsel's firm notified Anchorage Transcription, Inc. that it was retaining Anchorage Transcription, Inc. to transcribe the record in this matter;
- If and when counsel's firm executed a contract with Anchorage Transcription for transcription services in this case;
- When counsel's firm contacted Pacific Rim Transcription to provide transcription services in this case and the nature of its contract or commitment to pay Pacific Rim.

Appellant's counsel's response to this order to show cause shall be filed on or before **May 10, 2021**. Appellee shall have seven days from the date of that filing to submit a response.

Entered at the direction of the court.

Clerk of the Appellate Courts

  
Meredith Montgomery

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